

**EXHIBIT A**

**Implementation Report**



MEMORANDUM

February 20, 2001

TO: Federal Communications Commission

FROM: Roger Platt, Coordinator  
Best Practices Implementation, Real Access Alliance

RE: Progress in Implementing Real Estate's Voluntary Commitments

**I. Introduction and Summary**

In the summer of 2000, the real estate industry made a series of voluntary commitments to further speed consumer access to competitive telecommunications services through best practices and model agreements. Those commitments are being implemented through a dynamic, iterative and transparent process. This memo provides background on that effort, a snapshot of where it stands today as well as a brief discussion of next steps. It also reviews the response, including constructive assistance, our efforts have engendered from various telecommunications providers.

One achievement worth highlighting right at the outset relates to our commitment to develop a model license agreement for access to multi-tenanted office buildings. Members of our coalition have pledged to expedite access negotiations with telecom providers that choose to use the model agreement. (Use of the model by telecom providers is, of course, completely voluntary.) In mid-December, the real estate industry posted on [www.realaccess.org](http://www.realaccess.org), and circulated to almost fifty different real estate and telecommunications associations and companies, an initial review draft of the model license template. Within thirty days of posting and distributing the draft we received hundreds of general comments and specific ideas for modifying various elements of the model license agreement. These proposals came from building owners, incumbent local exchange providers and competitive local exchange providers, including both traditional CLECs and so called "BLECs." As a result, we fully expect to be in a position to release a more refined draft of the model agreement for office building access within the next couple of weeks.

In short, just months after the Alliance's last correspondence with the Federal Communications Commission (FCC) on our commitments project, tangible and very significant progress in the dialogue between building owners and the telecommunications industry has been achieved. Since receiving input on the model license agreement in January, the Alliance has been working diligently to respond to the various constructive suggestions and concerns of many different segments of the telecommunications industry. In addition, we are focusing on a number of other related projects. *In pursuing all our commitments we remain focused on advocating practices that will benefit consumers — the customers/tenants in our members' buildings — and not necessarily any specific type of service provider or their specific technology.* At the same time, of course, we are endeavoring to protect the reasonable investment-backed expectations of building owners. In the end, we think these objectives are fully compatible. The details of our ongoing efforts are set out below.

Building Owners and  
Managers Association  
International

Institute of Real Estate  
Management

International Council  
of Shopping Centers

Manufactured Housing  
Institute

National Apartment  
Association

National Association  
of Home Builders

National Association  
of Industrial and  
Office Properties

National Association  
of Real Estate  
Investment Trusts

National Association  
of Realtors

National Multi Housing  
Council

The Real Estate  
Roundtable

## **II. Background: Alliance Commitments to Expedite Consumer Access to Competitive Services**

In the summer of 2000, The Real Access Alliance coalition<sup>1</sup> ("Alliance") made a public commitment to expedite consumer access to competitive telecommunications services in multi-tenanted buildings. The broad reach of the coalition's membership<sup>2</sup> ensured its actions would extend across the entire real estate industry. For example, the overwhelming majority of the owners of the particular multi-tenanted office, residential and retail buildings actually targeted for service by competitive telecommunications providers are likely to be members of one or more of the associations affiliated with the Alliance.

### *Core Public Commitment to Develop and Promote Best Practices*

The Alliance's basic access commitments were set out in a letter to the FCC dated July 13, 2000. (A copy is attached as Exhibit A.) In that letter, the Alliance outlined commitments intended to reflect the industry's ongoing efforts to reach out and communicate constructively with our partners in the telecommunications industry. To further advance our tenants' interests we committed "to develop and actively promote the nationwide use of":

- Model forms of agreements between property owners and telecom providers regarding the terms and conditions for licensing access to multi-tenanted office, residential and retail buildings; and
- Best practices aimed at further facilitating swift negotiations between building owners and telecom providers regarding access to these buildings.

### *More Specific Commitments Welcomed by the FCC, Winstar*

On September 6, 2000 the Alliance, joined by a number of office building owners that collectively own or operate over 250 million square feet of office space, set out in greater detail a plan to begin implementing the "best practices" commitment. The purpose and specific details of these initiatives were set out in a letter to the FCC. (A copy is attached as Exhibit B.) The Alliance's intention was then, and remains today, to:

- Advance tenant choice of telecom providers in commercial office buildings;
- Facilitate the expeditious build-out of the nation's telecommunications network; and
- Sustain continued progress in the expansion of the markets for competitive telecommunications services in multi-tenanted buildings.

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<sup>1</sup> The Alliance is comprised of 11 national real estate associations: Building Owners and Managers Association, International, Institute of Real Estate Management, International Council of Shopping Centers, Manufactured Housing Institute, National Apartment Association, National Association of Home Builders, National Association of Industrial and Office Properties, National Association of Real Estate Investment Trusts, National Association of Realtors, National Multi Housing Council and the Real Estate Roundtable.

<sup>2</sup> The collective membership of the individual associations exceeds one million individuals involved in the real estate industry.

The associations that signed the September commitment letter agreed to promote, with and through their respective memberships, the development and implementation of certain best practices and related model agreements. The leading companies in the office building industry that joined in the letter agreed, on a voluntary basis, to honor these best practices in actual dealings with their tenants and their tenants' chosen telecom providers.

In addition to the development of model agreements, the associations agreed to "reject carrier requests for exclusive rights of access to any individual office building", and to reflect in new leases with tenants a commitment to respond within 30 days to tenant-generated requests for the service provider of its choice in office buildings. The September letter included a variety of other commitments including a commitment to establish a clearinghouse for complaints of behavior inconsistent with the best practices contemplated by the commitment and to collect data on the evolution of the relevant marketplace. (A one-page summary of the concepts set out in the September 6 letter to the Commission is attached as Exhibit C).

The September 6 plan was welcomed by, among others, the then-Chairman of the FCC, William Kennard, in a separate statement issued on October 12, 2000, and was cited positively by the full Commission in its First Report and Order and Further Notice (WT Docket No. 99-217) adopted on the same day. In addition, the commitments presented an opportunity for the telecommunications and real estate industries to work together toward a common goal. That opportunity was welcomed by, among others, Winstar CEO William J. Rouhana, Jr., who issued an October 12 press release which included the statement that:

"Our biggest opportunity, however, is to advance the cooperative efforts that we have already undertaken with the real estate community to bring consumers and businesses the broadband communications services that they need to be successful."

### **III. Model License Agreements: Their Purpose and Benefits**

The existence of standardized models for different types of building access transactions will streamline negotiations between building owners and telecom service providers. Beginning their access discussions with reference to a common template will benefit both parties. While those parties are always free to use any other mutually agreeable form, the "model" terms developed by the Alliance should offer them a document they are both familiar with and that both recognize as a fair starting point. It is the experience of our members that whether they are using model AIA forms for construction or design contracts or model BOMA forms for agreements with prospective tenants, the existence of commonly used standard forms significantly expedites the negotiating process.

As is necessarily the case with all business transactions, the specific parties to particular business transactions will bring their own economic (and other) bargaining strengths into the negotiations. Telecommunications companies that provide particularly attractive or cutting-edge services to tenants may enjoy more leverage in negotiating the terms of their use of a building owner's property than might other providers. In all cases, the parties to the actual agreement will remain free to negotiate the economic terms of their transaction without reference to any particular Alliance guidance or model. Indeed, the Alliance believes that the market continues to create positive incentives for building owners, providers and tenants to negotiate fair and reasonable access transactions. As a result, the Alliance has endeavored to ensure that economic elements of access agreements are not specified in the model terms.

#### **IV. Progress in Developing the Office Building Model License Agreement**

With respect to office buildings, the Alliance is developing a model license agreement and related best practices. The license agreement is also a key to the Alliance's specific commitment to provide expedited processing of tenant-generated requests for service from specific providers. We intend to distribute the final agreement when we have completed our outreach to the telecommunications industry and are confident that we have produced a document that will enjoy broad support from the real estate industry while addressing key concerns of the telecom industry. We anticipate that within a few more weeks we will be in a position to issue a revised draft of the model agreement for one final (albeit shorter) comment period. If we can achieve our intended schedule this process will require a number of additional weeks before it is finally concluded.

##### *Development and Vetting of the Initial Draft*

The initial draft was developed through a process that involved the consideration of hundreds of industry forms and executed access agreements. Virtually every provision included in the draft has been "road tested" in the sense that it has been agreed to by building owners and telecom providers in actual business transactions. (A copy of the initial review draft is attached as Exhibit D.) On December 15 we sent copies of the draft agreement to almost fifty different real estate and telecommunications companies and/or associations. (A copy of the form circulation letter is attached as Exhibit E.) In addition, we placed the draft on our web site and issued a press release to more broadly communicate its existence. (A copy of the press release is attached as Exhibit F.)

In order to ensure development of the model would proceed in an expeditious manner, we gave would be commenters on the draft 30 days to provide us with their comments. When some organizations and companies asked for an extension of time we simply agreed to take their comments after the deadline. To date, no comments have been refused simply because they arrived after January 15. To date, the document has been subject to hundreds of specific comments. The Alliance is in the process of creating a detailed summary of those comments and the action taken with regard to the most commonly made suggestions. It is our intention to issue one more draft of the agreement together with the comment summary. Approximately 15 to 20 days later we anticipate issuance of the final agreement.

##### *Additional Outreach and Educational Efforts*

At the same time that the Alliance has been developing our responses to comments on the draft agreement it has already begun promoting the basic concepts underlying the industry commitments. I have spoken or will in the near future speak on the subject of the "best practices" commitments at various conferences in locations as diverse as New York, Chicago and San Francisco. (A list of those events is attached as Exhibit G.) In addition most members of the Alliance have organized seminars or sessions on the subject at meetings of their own members. (A list of those events, both past and present, is attached as Exhibit H.)

In general, the Alliance has been pleased by the good faith efforts of telecommunications companies whether BLECs, CLECs or ILECs to join us in trying to develop a solid model agreement. A number of prominent companies, many of which have taken positions contrary to those of the Alliance in FCC proceedings, have made constructive suggestions for improving the model. Some have spent considerable time and energy in dialogue with our transactional expert/advisors, Nelson Migdal and Eric Fishman (partners with the national law firm of Holland and Knight), working to develop creative ways to address some of the tougher issues. In contrast, however, a number of major CLECs have chosen, for whatever reason, not to participate in the process. Whether or not we can agree on *all* the issues raised by any given telecom company, the idea that the model agreement project merits no cooperative response whatsoever, is an attitude we are at a loss to comprehend. As a result, we will continue our efforts to encourage input from those companies and others.

The Smart Building Policy Project (SBPP), which represents a subset of Association for Local Telecommunications Services (ALTS) members concerned with building access issues, has not yet provided written comments on the draft citing a lack of time to coordinate a joint set of comments. While this has been disappointing, the fact that many of that coalition's key members have submitted their individual comments already has greatly improved the process and will ensure a much stronger final product. We are grateful to SBPP for what we understand are their continuing efforts to encourage individual member companies to provide us with feedback. Nonetheless, because SBPP has not submitted its own specific comments on our draft, we are not able to respond to their generalized allegations (in their last FCC submission) that the initial draft was in some respects "overreaching" and "invasive." We feel confident, however, that our response to the specific points raised by their individual members should mitigate these concerns substantially.

#### **V. Ongoing Efforts to Revise the Initial Model to Address Telecom Providers' Concerns**

The initial draft of the office building model agreement already included many provisions for the benefit of telecom providers and was intended to be a balanced document. Nonetheless, providers had certain concerns — in some cases, the same or highly similar concerns — which they felt should be more fully accommodated in the final "model." The following are a sampling of the more significant issues raised in actual comments that the Alliance is working, we believe with considerable success, to address in the final model.

- The desire to have the discretionary acts or decisions by building owners (contemplated by the agreement) qualified by some "reasonableness" or "commercially reasonable" standard.
- The desire to have parity between the way that different types of carriers, whether ILECs, BLECs or CLECs, may gain access to the already licensed property to manage and maintain their wiring (and to otherwise service existing customers).
- The desire to limit building owner involvement in the specific details of the telecom providers' dealings with their own customers.
- The desire to avoid specific provisions in the model (including related default provisions) whereby providers would warrant their *ongoing* financial or technical capacity to effectively serve their customers.

In addition to the issues listed above, telecom providers have also raised a number of other concerns that have proven more difficult to address consistent with the needs of building owners to preserve their property rights and maximize their tenants' choice of quality, competitive services. These include:

- The desire to have building owners warrant that CLECs will enjoy *complete* parity with incumbent local exchange providers with respect to every element (financial and otherwise) of the access transaction;
- The desire to delete or dramatically revise the rights reserved by some building owners to develop their own central distribution systems (CDS) in order to accommodate a very large number of competitive providers in the building;
- The desire to have the unconditional right to assign use of the licensed space (or wiring or equipment in that space) to other providers who may be unknown to the building owner; and
- The desire to have the property owner assist with the marketing of their particular company's services to *other* tenants in the building.

(A full list of the types of comments received on the first draft and action taken with regard to those comments will be released together with the penultimate draft of the document.)

We will continue to work to develop creative ways to bridge the gap on at least some of these latter types of issues. At the end of the day, however, it may be necessary to leave some, or perhaps even all, of these concerns to individual negotiations.

## **VI. Next Steps**

Following the completion of the model office building license agreements, the Alliance plans to develop some "model" language for use in new lease agreements with office tenants. Such language would be aimed at reflecting an owner's commitment — to its tenant — to provide expeditious access by the tenant's provider of choice. While such language will always be tailored to the specifics of a given transaction, the Alliance is eager to ensure real estate companies have guidance in implementing this important aspect of the plan set out in the September 6 letter.

In addition, the Alliance plans to continue its substantial educational campaign regarding the full range of best practices concepts. A highlight of those efforts may be a program in Washington this spring that will bring the General Services Administration together with senior representatives of the many owners that lease space to federal tenants. That program will include a detailed dialogue on how owners can best ensure federal tenants receive the providers of their choice. As GSA moves to insist, as a matter of policy, that building owners should be prepared to fully meet their government tenants' telecom demands, it will be in a position to exert its considerable market leverage to that end.

There are, of course, several other elements of the September 6 plan for implementing the real estate industry's voluntary commitments. For example, the industry has indicated that it is

“prepared to establish an independent clearinghouse to which tenants, real estate companies and/or telecom providers can submit allegations of behavior inconsistent with the industry commitments set out in the July 13 letter.”

To date, the industry has pursued a number of possible approaches for implementing the clearinghouse including, most notably, the possibility of having a credible third party, such as the J.D. Powers and Associates, develop and maintain a web site for that purpose. Winstar, among others, has offered to provide additional ideas on how best to advance the clearinghouse concept and we look forward to working with them and other interested CLECs on that important project. In that regard, we look forward to considering a form of “better business bureau” that is sufficiently neutral in character that a joint real estate-telecom funding arrangement can be developed.

Other initiatives such as model agreements and best practices for the residential and retail sectors are also underway. In sum, the real estate industry is pleased with the progress we have made to date and we look forward to keeping the FCC informed of any significant new developments.

## **VII. Conclusion**

As stated at the outset, our public commitments to expedite consumer access to competitive telecom services in multi-tenanted buildings is focused directly on the interests of *our* tenants. The failure on the part of any building owner to meet the needs of those particular consumers may place their real estate investments in serious jeopardy. Tenants, after all, always have the option of choosing *another* building where their telecommunications requirements are more effectively addressed. As a result, we believe we have a substantial stake in achieving the goals of our commitments and will continue on our current path. In doing so, we look forward to receiving continued assistance from the telecom industry.



July 13, 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: WT Docket No99-217 & CC Docket No. 96-98

Dear Chairman Kennard:

We, the undersigned national real estate associations, are writing regarding the critical issue of more effectively facilitating tenants' access to competitive telecommunications service. We appreciate that, in recent months, the Commission has paid considerable attention to this issue. Our goal is to bring this matter to a mutually agreeable conclusion. The overriding objective is responsiveness to tenants' needs. Toward that end, we propose that you consider the commitments outlined below as responsive to the broad policy objectives outlined in the docket.

Our members share the Commission's commitment to ensuring that the occupants of multi-tenanted buildings enjoy the broadest possible array of competitive telecommunications services. We continue to believe that this is already occurring without the need for new regulations. Our members regard the expanding universe of competitive telecommunications providers as partners in fulfilling this mission. These partnerships attest to our industry's recognition that high quality telecommunications service is essential to attracting and keeping tenants. When tenants succeed, both our industries succeed.

In the marketplace — and in discussions over the past few years that have specifically focused on the policy matters at issue in this docket — our members have evidenced their willingness to listen to the concerns of telecom providers as to how best to achieve our mutual goals. This letter reflects our commitment to redouble ongoing efforts to reach out and communicate constructively with our partners in the telecommunications community.

We have watched closely as the formal record of Congressional and Commission consideration of building access issues has developed. In the process, our members have gained a deeper understanding of the concerns of some telecom providers regarding what they view as obstacles to the efficient provisioning of telecommunications services. To further advance our tenants' interests, we have committed to develop — and actively promote the nationwide use of — a model set of building access agreements between property owners and telecommunications service providers. In addition, we believe it will be equally important to develop — and promote the nationwide use of — a model set of "best practices" aimed at further facilitating negotiations with telecom service providers. As part of this commitment, we will make every effort to ensure that this initiative reaches the retail, office, industrial, residential and manufactured housing sectors of the real estate industry.

We intend to work together on model agreements and best practices that directly address many of the concerns expressed in the Commission record, including speed of processing. In

addition, we will solicit as much input from representatives of the telecommunications industry as possible in furthering our ongoing dialogue. All fair and reasonable recommendations will be welcomed as our members pursue this initiative. We would also certainly welcome the Commission's input in this dialogue.

In the end, this is a project that our members believe will benefit their tenants, and therefore, the health of their own real estate businesses. It is, therefore, an initiative to which they are wholeheartedly committed. We trust that you will accept our commitment in the good faith in which it is offered, aimed at a sensible and workable outcome in this important proceeding.

Very truly yours,

The members of the Real Access Alliance:

Building Owners and Managers Association International  
Institute of Real Estate Management  
International Council of Shopping Centers  
Manufactured Housing Institute  
National Apartment Association  
National Association of Home Builders  
National Association of Industrial and Office Properties  
National Association of Real Estate Investment Trusts  
National Association of Realtors  
National Multi Housing Council  
The Real Estate Roundtable

Cc: The Honorable Susan Ness  
The Honorable Michael Powell  
The Honorable Harold Furtchgtott-Roth  
The Honorable Gloria Tristani  
Kathryn Brown, Chief of Staff to Chairman Kennard  
Thomas Sugrue, Chief of the Wireless Telecommunications Bureau



**RealAccess  
ALLIANCE**

Building Owners and  
Managers Association  
International

Institute of Real Estate  
Management

International Council  
of Shopping Centers

Manufactured Housing  
Institute

National Apartment  
Association

National Association  
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National Association  
of Industrial and  
Office Properties

National Association  
of Real Estate  
Investment Trusts

National Association  
of Realtors

National Multi Housing  
Council

The Real Estate  
Roundtable

September 6, 2000

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: WT Docket No 99-217 & CC Docket No. 96-98

Dear Chairman Kennard:

The Real Access Alliance writes on behalf of the following national real estate associations and leading private and publicly held real estate companies to set out our strategy for implementing a number of the key elements of the building access commitments outlined in our letter to you dated July 13, 2000.

The Alliance, whose member associations represent over 1,000,000 owners and operators of real estate nationwide, consists of the following:

Building Owners and Managers  
Association International  
Institute of Real Estate  
Management  
International Council of  
Shopping Centers  
Manufactured Housing Institute  
National Apartment Association

National Association of Home Builders  
National Association of Industrial and  
Office Properties  
National Association of Real Estate  
Investment Trusts  
National Association of Realtors  
National Multi Housing Council  
The Real Estate Roundtable

The initial group of building owners publicly committing to the best practices outlined in this letter and who collectively own or operate over 250 million square feet of office space include the following: Arden Realty, Inc., Birmingham Realty, Boston Properties, Inc., Burnham Real Estate Services, CarrAmerica Realty Corporation, Catellus Development Corporation, Charles E. Smith Commercial Realty, Equity Office Properties Trust, Rudin Management Company, Inc., Spieker Properties, Inc., TLAA-CREF, and Tishman Speyer Properties.

Specifically, as detailed below, we are prepared to operationalize our speed of processing commitment to tenants. The above-listed real estate companies are committing to reflect that commitment in lease terms offered to new office tenants in their buildings, and the undersigned trade associations are committing to promote the use of such lease terms among their members. Additionally these policies will be reflected in the BOMA standard lease, a widely-used form.

We made the July 13, 2000 commitments voluntarily and with the expectation that you would consider them as responsive to the broad policy objectives outlined in the docket referenced above. We took those steps notwithstanding our position that these matters raise constitutional questions and lie outside the jurisdiction of the Federal Communications Commission (FCC). Our commitments concern a range of matters associated with telecommunications services in multi-tenanted office, residential, industrial and retail real estate and in multi-tenanted manufactured housing communities. They include the development of model contracts and best practices aimed at improving the speed of processing tenant and provider generated requests for access to those types of buildings.

The overriding objective of this implementation plan is the same as that of our basic commitments — responsiveness to the needs of tenants in multi-tenanted buildings. Because the access issues discussed in this docket relate primarily to office building access, we have focused on those issues first. Nonetheless, we remain committed to developing model agreements and best practices aimed at benefiting tenants in other multi-tenanted buildings. We also are not setting these ideas out as a comprehensive list of office-related best practices. As our experience with the specific issues relevant to that market increases, we expect to review the effectiveness of these commitments and, if warranted, to add additional best practices.

The specific implementation details of these best practices are as follows:

- Non Exclusivity in Office Building Contracts

Real estate companies will reject telecommunications provider requests for exclusive contracts to serve office buildings. “Exclusive” contracts will be understood in the practical sense of that term, including contracts that are exclusive by their explicit terms and those that, as a practical matter, would necessarily require the owner to treat one telecommunications provider as having certain exclusive rights to serve tenants in the building.

- Quantitative Study

We welcome any objective, fact-finding studies of the marketplace, as we continue to believe that the market for building access is thriving. We, therefore, believe that a disciplined, quantitative study of the development of competition in the office building market, periodically conducted under the auspices of the FCC, will support this view, and would serve the public interest. The annual video competition or wireless competition report could provide a model. The Alliance members will work with the FCC to provide objective data to be gathered by an independent source for use by the Commission and others to assess the status of the marketplace.

- Clearinghouse for Information and Complaints

The Alliance is prepared to establish an independent clearinghouse to which tenants, real estate companies and/or telecom providers can submit allegations of behavior inconsistent with the industry commitments set out in the July 13 letter. While such a clearinghouse would not exist to dictate the resolution of specific complaints, it

would function on the model of a "better business bureau." It might also allow a more transparent process for determining the state of the market for building access.

- Speed of Processing

As reflected in our contributions to the record in this proceeding, we continue to believe that the market is working to ensure that tenants are not experiencing significant problems with the speed with which requests for providers' access to buildings are being processed by real estate owners. Nonetheless, *any* such problems could adversely affect tenants by delaying their access to competitive telecommunications providers. Ameliorating any difficulties that tenants may experience is the paramount reason for speed of processing improvements and commitments.

Today, we are committed — as an industry and as individual companies — to establishing and promoting a practice of timely responses to tenant-generated requests for service from providers not yet serving a particular office building. Specifically, building owners will respond within 30 days with a yes or no answer to any written request for access that is generated by an office building tenant. Office building owners will proceed, in good faith, to accommodate the tenant requests. To that end, the building owner will work expeditiously and in good faith with the service provider to resolve any outstanding contract terms and to facilitate prompt tenant service. Building owners will offer this faster track speed of processing in any instance where,

- there is appropriate, uncommitted space available to accommodate the telecom provider (the tenant requesting service would have a reasonable opportunity to verify, with the assistance of the requested telecommunications provider, if the tenant desires, whether there is such space available), and
- the telecommunications provider indicates its intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry, including the provider's agreement to furnish service to any tenant in the building within a reasonable period of time. While those agreements are being developed, a telecom provider's willingness to abide by an interim model agreement or sample contract developed from among typical contracts already signed between building owners and competitive telecommunications providers would be an acceptable way to meet this requirement.

The sole reason for legitimate public policy interest in the area of building access is to ensure that tenants have a meaningful array of choices among telecommunications service providers and the services they offer. Accordingly, the Alliance contemplates that in buildings where there are multiple competitive providers already serving the building, the tenant should be informed of the availability of the existing alternatives. The tenant, in turn, will indicate to the building owner whether there are material advantages offered by another provider whose services the tenant is seeking. Such advantages might include better price, better customer service, higher bandwidth, and/or better billing services. This dialogue will provide tenants with information about their existing choices and educate the building owner about the opportunities presented by a new service provider. It would also ensure that letters of authorization purporting to assert a tenant's choice are bona fide requests from the tenant and not provider-generated

requests. Provider-generated requests for access to buildings where they do not yet have any customers, or where master contracts for multiple buildings are sought ("pre-provisioning requests") will be addressed somewhat differently as indicated below.

- Policies to be Reflected in New Leases

As reflected in our contributions to the record, the Alliance remains committed to the view that the FCC's assertion of provisional or other jurisdiction over building access disputes would be unnecessary and, in some instances, even counterproductive to advancing *tenants'* interests in access to competitive telecom services. Nonetheless, individual building owners that commit to abide by the particulars set out in the preceding "Speed of Processing" paragraph, including those already identified in this letter, will reflect that commitment in terms offered in new leases with office tenants. Notice of the commitments set forth above reinforcing tenants' access to competitive telecom service providers will be furnished to existing leaseholders. Additionally these policies will be reflected in offered terms in the BOMA standard lease, a widely-used form.

- Clearer, More Predictable Process for Handling Provider-Generated Requests

Tenant-generated requests are appropriately the concern of consumer-oriented public policy. Provider-generated requests, by contrast, chiefly reflect the individual business plan objectives of specific commercial providers. Nonetheless, building owners are currently negotiating a wide range of access agreements with a wide variety of telecom providers even before any specific tenant indicates an interest in (or need for) their particular products or services. In fact, some of these agreements address the access rights of certain providers to a large number of buildings and, in some instances, may help tenants get shorter "hook-up" times for services that are different or cheaper than those already available in the building.

Some telecom providers have complained that their requests for "pre-provisioning" access are handled in a confusing and often slow manner by building owners/managers. Since tenants can benefit from a clear and predictable line of communication between building owners and telecom providers, the Alliance has determined that it is appropriate to develop a clearer and more predictable process for responding to these pre-provisioning requests. Such a process will include a commitment that real estate owners will respond within 30 days of receiving any written provider-generated request for space with clear guidance as to their individual policies (including specific approval criteria) regarding such requests for space. Such guidance would also include a specific timetable governing their decisions to respond to such requests for space.

This commitment regarding provider-generated requests will be extended to any provider that indicates an intent to execute an access agreement that is substantially in the form of the model contract(s) to be developed by the industry, including an agreement to actually make the provider's service available to the tenants of the building. In other words, the provider's continuing access and use of space in the building(s) would be conditioned on their deploying their equipment and/or serving tenants at the building(s) by the dates negotiated by the parties to that contract.

### *Conclusion*

This strategy is being implemented as an integral alternative to a federal regulatory approach for addressing building access issues. Should there be federal regulations issued in this area, this approach would need to be revised accordingly. Similarly, it remains to be seen how best to implement the July 13 commitments in states that purport to have legally enforceable building access regulations. That issue will require further consideration and deliberation.

Most importantly, this strategy will require a reasonable amount of time and a concerted and focused effort by both building owners and their trade associations on the one hand and by competitive telecommunications providers on the other hand to be implemented successfully. It cannot prosper in an environment in which it is perceived that policymakers are imminently poised to change the landscape of the marketplace through wide-ranging regulatory proposals. In fact, it will be important for the FCC and other regulatory agencies at the state and federal level to encourage our partners in the telecommunications industry to be full partners in this important project. In the end, this is intended to be a win-win-win for tenants, owners and telecom providers.

We submit two copies of this letter for the record.

Very truly yours,

The Members of the Real Access Alliance

cc: Chairman Kennard  
Commissioner Furchtgott-Roth  
Commissioner Ness  
Commissioner Powell  
Commissioner Tristani  
Kathryn Brown  
Diane Cornell  
Adam Krinsky  
Clint Odom  
Mark Schneider  
Thomas Sugrue  
Joel Taubenblatt  
Peter Tenhula  
Lauren Van Wazer  
Helgi Walker  
Chris Wright